



State of Iowa

Alcoholic Beverages  
Division

**Alcohol Compliance  
Rules & Regulation  
RAGBRAI**

# Introduction

Iowa's alcoholic beverages industry operates within the confines of a carefully cast partnership between the Iowa Alcoholic Beverages Division (Division), licensees and law enforcement officials. Close cooperation among these three entities is essential for regulation and enforcement of Iowa's alcoholic beverages laws in order to achieve compliance.

This manual was developed to provide information for licensees/permittees, their employees and agents to have a general understanding of the laws and regulations governing the alcoholic beverages license/permit. Knowledge may be the least expensive insurance against the imposition of administrative civil penalties, license suspension or revocation, criminal fines, and civil lawsuits.

The Division hopes that this manual will provide licensees/permittees, their employees and agents with the information necessary for the responsible sale of alcoholic beverages and will assist in their effort to:

- Comply with alcoholic beverages laws and regulations.
- Curb underage drinking and illegal use of alcoholic beverages.
- Support the responsible consumption of alcoholic beverages by people of legal drinking age.

## Timeline

The Division will be putting requirements in place to provide a clear overview of what are acceptable practices regarding alcohol licensing, sales of alcohol and trade practices. Each licensee/permittee will be required to follow the timeline outlined below for **any changes, updates or new applications to their license/permit.**

Licensees/permittees who are not making any changes or updates to their license/permit may continue to sell alcoholic beverages permitted by their license/permit type.

### \*\*\* Friday, July 7: \*\*\*

All new applications and updates to a current license must be submitted to The Division and be in "approved by local authority" status in eLicensing.

### **Monday, July 10 – Friday, July 14:** Grace period for licensee/permittee

If an application was submitted ahead of the July 8 deadline, but local authority approval was delayed by an insurance carrier or city council/board of supervisors meeting, licensees/permittees may submit an electronic explanation to The Division explaining why the application was delayed. The Division will then review the explanation and approve or deny the application.

**Submit all electronic explanations to:** [licensing@iowaabd.com](mailto:licensing@iowaabd.com)

### **Monday, July 17 – Friday, July 21:**

No new or updated applications will be accepted from licensees/permittees along the RAGBRAI route. All applications submitted to The Division will be denied.

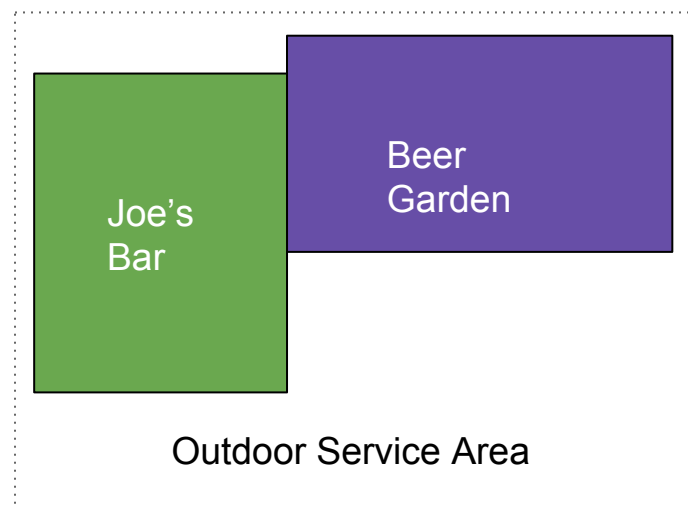
Current license/permit holders, may continue to sell alcoholic beverages in their licensed premises along the RAGBRAI route. It will need to operate within the parameters of their original license/permit type (Example: class “B” beer permittees can only sell beer and coolers - NOT ALCOHOLIC LIQUOR) and follow all alcohol laws required by Iowa Code chapter 123. However, if a new or existing business wishes to make changes to an existing license/permit or acquire a new alcohol license/permit during RAGBRAI, the following three options are available.

## 1. Outdoor Service Areas (patios, beer gardens, etc.)

Outdoor service areas are designated areas which are connected to a licensed premises. Outdoor service areas are considered extensions of existing licensed premises, however, they are not automatically included as part of the licensed premises. Only products permitted by the license/permit may be served. Licensees/ permittees may not sell or serve any alcoholic beverages in an outdoor area until they have met licensing requirements by filing the following documents with the local authority:

- Online application for outdoor service area.
- Sketch of the outdoor area clearly showing boundaries of the area and its relationship to the licensed premises.
- Online endorsement from the licensees/permittees insurance company certifying that the dram shop liability insurance policy covers the outdoor service area.

The words “outdoor service area” will be reflected at the bottom of the license if the licensee has met all requirements for an outdoor service area. (“Outdoor service area” will not be reflected on the license if the outdoor area is to be used for less than a two-week period; a letter will be sent to the local authority.) Outdoor service areas are not stand-alone licenses. They expire with the license and must be renewed annually.



**Iowa Code section 123.3 and 185 Iowa Administrative Code**

## 2. License Transfers

Although liquor, wine and beer licenses may not be transferred from one person to another, they may only be transferred from one location to another. Licenses may only be transferred to a location within the boundaries of the approving local authority. If the license is approved by a county board of supervisors, the license may be transferred only to a location within the unincorporated area of the same county – not to an incorporated city within that county. If the license is approved by a city council, the license may be transferred only to a location within the same city – not to an unincorporated area of that county or to another incorporated city.

Licensees/permittees may transfer their license/permit to another qualified premises by filing the following documents:

- Online application for transfer of liquor license, wine permit or beer permit.
- Sketch of the new location showing the bar, openings to other rooms, exits, restrooms, tables and seats, and storage area.
- Online endorsement from the licensee's/permittee's insurance company certifying that the dram shop liability insurance is transferred to the new location for the same period that the license/permit is transferred. (Endorsement is required only when dram shop liability insurance is required for the class of license/permit that is transferred.)

The above documents must be approved by the local authority and The Division before selling and dispensing alcoholic beverages in the new location. Licensees/permittees must limit the selling and serving of alcoholic beverages in the new location to the dates of transfer which have been approved by the local authority (city council or county board of supervisors). *All selling and serving of alcoholic beverages must cease at the original location during the period of the transfer.* Only those alcoholic beverages permitted by the license/ permit may be sold on the premises to which the license has been transferred. Transfers may be temporary (24 hours to seven days) or permanent. If the transfer is permanent, The Division will issue an amended license reflecting the new address. If the transfer is temporary, a letter will be sent to the local authority issuing the transfer for the temporary dates.

**Iowa Code section 123.38 and 185 Iowa Administrative Code**

### **3. Five-day Licenses**

Qualified persons wanting to sell and dispense alcoholic beverages at a town celebration or other special event must obtain a five-day license. Five-day licenses are valid for a period of five consecutive days. License applicants wanting to sell alcoholic beverages on a Sunday within the five-day period must also obtain a Sunday sales privilege. Licensing requirements for five-day licenses are the same as the requirements for annual licenses of the same class. Special event licenses may be issued for on-premises locations only.

**Iowa Code section 123.34**

#### **Five Day License Types:**

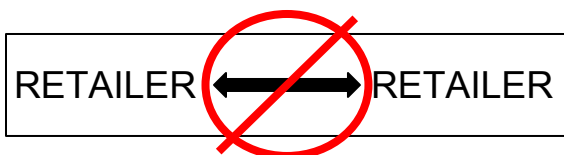
Class "B" Beer	Beer & Coolers
Special Class "C" Liquor	Beer, Wine & Coolers
Class "C" Liquor	Liquor, Wine, Beer & Coolers

**Iowa Code section 123.38 and 185 Iowa Administrative Code**

## **Laws and Regulation**

### **Transfer of Alcoholic Beverages Between Licensed Premises**

Liquor, wine and beer inventory may not be transferred from one retail premises to another even if all of the premises are owned by the same person, partnership, corporation or association.



***Exceptions: Inventory may be transferred when the retail license is transferred from one location to another.***

**Iowa Code sections 123.22, 123.30, 123.123, 123.130, 123.131, 123.132, 123.173, 123.177, 123.178, 123.178A and 123.178B**

## Buying Alcoholic Beverages For Resale

Iowa's alcoholic beverages industry operates under a three-tier system – manufacturer (importer) to wholesaler to retailer. All liquor, wine and beer purchases must be made through the three-tier system.

**Off-premises licensees** (liquor stores, grocery stores, convenience stores, etc.) must purchase the liquor, wine and beer for resale in their licensed establishments from the following sources:

•**Liquor:** From the Iowa Alcoholic Beverages Division only. The Division is the sole wholesaler of liquor in Iowa.  
**Iowa Code sections 123.22 and 123.30**

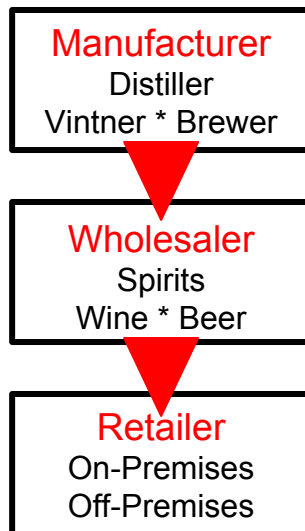
•**Wine:** From Iowa licensed wine wholesalers only.

**Iowa Code sections 123.173, 123.177, 123.178, 123.178A and 123.178B**

•**Beer and wine coolers:** From Iowa licensed beer wholesalers only. No exceptions!

**Iowa Code sections 123.130 and 123.132**

**On-premises licensees** (bars, restaurants, hotels, motels, etc.) must purchase the liquor, wine and beer for resale in their licensed establishments from the following sources:



License		Must Purchase From
Beer Off-Premises	▶	BEER WHOLESALER
Beer On-Premises	▶	BEER WHOLESALER
Wine Off-Premises	▶	WINE WHOLESALER
Wine On-Premises	▶	WINE WHOLESALER (Or less than one case per brand, per day from Class E retailer)
Liquor Off-Premises	▶	IOWA ALCOHOLIC BEVERAGES DIVISION
Liquor On-Premises	▶	CLASS E RETAILER

•**Liquor:** From off-premises class “E” liquor licensees (liquor stores, grocery stores, etc.) that hold federal wholesale permits. **Iowa Code sections 123.22 and 123.30**

•**Wine:** From Iowa licensed wine wholesalers. On-premises licensees also may purchase limited quantities of wine (less than one case per brand, per day) from off-premises class “E” liquor licensees (liquor stores, grocery stores, etc.) who also are licensed to sell bottles of wine. **Iowa Code sections 123.30, 123.173, 123.177, 123.178 and 123.178B**

•**Beer and wine coolers:** From Iowa licensed beer wholesalers. No exceptions! **Iowa Code sections 123.123 and 123.130**

## Record Keeping Requirements

Iowa law requires licensees/permittees to make their records available to law enforcement officials and to members of the Iowa Alcoholic Beverages Division during business hours and when the licensee/permittee, their employees, agents or patrons are on the licensed premises. During RAGBRAI, licensees/permittees are expected to have receipts on hand for any equipment, furnishings, or fixtures that have been rented.

**Iowa Code sections 123.14, 123.21, 123.33 and 123.138 Also Internal Revenue Code 26 U.S. 5121-5123**

## **Bootlegging**

Selling liquor, wine, beer and other alcoholic beverages without a license is bootlegging. Whenever liquor, wine or beer are sold or their cost is recovered in any manner, a license/permit is required. Bootlegging is a criminal offense (serious misdemeanor). Bootlegging includes:

- Selling alcohol without a license.
- Allowing your liquor license to expire without renewing.
- Selling or serving outdoors without an outdoor service area privilege.**
- Bringing spirits, wine or beer across the state border to sell in your licensed establishment.**
- Retailer buying from someone other than a wholesaler.**

**Iowa Code sections 123.59, 123.60 through 123.88 and 123.119**

## **Display of License**

Licensees/permittees must prominently display their liquor, wine or beer license/permit so that it is in full view of the public.

**Iowa Code section 123.21 and 185 Iowa Administrative Code**

## **Ages to Sell, Serve and Deliver**

A licensees/permittees employees and agents must be at least 16 years of age to sell (in original unopened containers) liquor, wine and beer for off- premises consumption (grocery stores, convenience stores, liquor stores, etc.).

***Employees must be at least 18 to sell and dispense liquor, wine and beer for on-premises consumption (restaurants, bars, clubs, etc.).*** Employees must be at least 16 to deliver to on-premises licensed retailers. Employees must be at least 21 to deliver to consumers and they must do so in a vehicle insured and owned, leased or under the control of the licensee or permittee.

**16**

**TO SELL**  
for off-premises  
consumption

**18**

**TO SERVE**  
for on-premises  
consumption

**21**

**TO DELIVER**  
to consumers

**Iowa Code sections 123.46, 123.47 and 123.49 and 185 Iowa Administrative Code**

## **Iowa's Legal Drinking Age**

Iowa's 21-year-old legal drinking age applies to everyone, including patrons, agents, employees and the licensees/permittees family members. Licensees/permittees, their employees and agents must exercise reasonable care to assure that a person is of legal drinking age before selling or serving them an alcoholic beverage.

**Iowa Code sections 123.47 and 123.49**

## **Age to be in Licensed Establishments**

Iowa law does not prohibit minors from being in licensed establishments. However, licensees/permittees should check with their local authority to determine if there is an ordinance governing minors in licensed establishments. If the local authority has such an ordinance, the ordinance applies.

**Iowa Code section 123.39 and 185 Iowa Administrative Code**



## **Hours of Sale**



The hours during which alcoholic beverages may be legally sold and served are:

**Monday through Saturday 6 AM to 2 AM. Sunday 8 AM to 2 AM.**

A Sunday sales privilege is required for all off-premises beer and all on-premises liquor, wine and beer Sunday sales and service. Only class "E" liquor licensees, class "B" wine permittees, class "B" native wine permittees and class "C" native wine permittees have a Sunday sales privilege as part of their basic license/permit.

**Iowa Code sections 123.36, 123.49 and 123.134**

## **Outside Advertising**

Licensees/permittees may advertise price and brand names of liquor, wine and beer in the following manner:

- Media (newspapers, radio, television, etc.).
- Inside signs (neon signs, mirrors, etc.).
- Outside signs (billboards, reader boards, etc.) which are not located on the licensed premises. Licensees/permittees may not advertise specific brand names on signs located on the outside of their licensed premises (in the parking lot, on the outside of the building, etc.).

***Exception: Outside signs with specific brand names of liquor, wine and beer are legal when located in enclosed or partially enclosed areas (patio umbrellas with specific name brands in a fenced outdoor beer garden, etc.).***

**Signs in the outdoor service area must face inward.**

**Iowa Code section 123.51**

## **Trade Practices**

There are state and federal laws and rules that regulate marketing practices between industry members and retailers. When an industry member provides unfair or unlawful services, benefits and gifts to a retailer in order to obtain a better position in the marketplace, it can be referred to as unfair competition or unlawful trade practices. Gifts, services and benefits are examples of areas that are regulated in marketing practices. Retailers should be aware of which marketing practices are considered to be fair and allowable as well as practices deemed to be unfair or inducements. The handout provided in your packet provides answers to frequently asked questions about marketing practices.

**Iowa Code section 123.45, 123.186 and 185 Iowa Administrative Code**

## **Infused and Premixed Drinks**

On-premises liquor control licensees may mix, store, and dispense mixed drinks, cocktails and alcohol infusions which are not for immediate consumption. The rules define "immediate consumption" to mean the mixing and fulfilling of a mixed drink or cocktail order only after receiving the order. Examples are margaritas, daiquiris, bloody mary's, Jell-O shots, and martinis that have been premixed and contain alcoholic liquor. Licensees who intend to serve premixed drinks should become familiar with the record keeping and label requirements. For more information reference the handout provided in your packet or visit <https://abd.iowa.gov/alcohol/infused-and-premixed-drinks>.

**Iowa Code section 123.49 and 185 Iowa Administrative Code**

## **Gambling**

A social gambling license permits betting in small stakes card and parlor games between individuals who have a social relationship (other than for the purpose of gambling). Participants must be at least 21 years old and cannot win or lose more than a total of \$50 in a 24-hour period. General admission fees or cover charges may not be charged at any time social gambling is allowed. Licensees/permittees, their employees and agents may not promote, sponsor, conduct or act as a banker or cashier for social games. For more information or information on how to apply for a social gambling license reference the handout provided in your packet, visit **www.DIA.iowa.gov** or contact the **Social and Charitable Gaming Division** at 515-281-6848.

**Iowa Code sections 99B.6, 123.49 and 123.50 and 481 Iowa Administrative Code chapter 102**

## **Sales to intoxicated persons**

It is unlawful to sell or serve liquor, wine or beer to a person who is, or appears to be, intoxicated. The laws governing the sale of alcoholic beverages to an intoxicated person apply to both on- and off-premises licensees – bars, restaurants, hotels, motels, liquor stores, convenience stores, grocery stores, etc.

Although it may be difficult to refuse the sale or service of alcoholic beverages, the consequences that may occur if appropriate action is not taken are significant. People who become intoxicated put themselves and others at risk of injury and harm. Licensees/permittees, their employees and agents who sell or serve an alcoholic beverage to an intoxicated person must realize that their failure to intervene may indirectly injure or kill someone.

Laws governing an intoxicated person also apply to licensees/permittees. Intoxication impairs judgment and interferes with sound business decisions. For this reason, licensees/permittees may find it a good business practice not to drink while working.

Licensees/permittees who sell or serve an alcoholic beverage to an intoxicated person are subject to criminal penalties. In addition, administrative proceedings may be initiated for suspension or revocation of the license/permit. Licensees/permittees also may be held civilly liable under Iowa's Dram Shop Act for serving an alcoholic beverage to an intoxicated person who causes damage, injury or death of an innocent party. Licensees/ permittees can minimize their risk by never serving an alcoholic beverage to a person who is or appears to be intoxicated.

**Iowa Code sections 123.49, 123.92, 123.93 and 321J.2**



## Iowa Program for Alcohol Compliance Training



The Iowa Program for Alcohol Compliance Training (I-PACT) is an alcohol retailer training course for on- and off-premises licensees. The training is online and free of charge. I-PACT covers the Alcoholic Beverages Control Act (Iowa Code chapter 123), valid forms of identification, and how to spot altered and fake IDs. For more information reference the handout provided in your packet or visit

**<https://abd.iowa.gov/education/i-pact>.**

## I-PLEDGE Tobacco, Alternative Nicotine and Vapor Products Retailer Training

All individuals who sell tobacco, alternative nicotine and vapor products as well as holders of retail licenses should take the I-PLEDGE training. The core objective of the I-PLEDGE program is to prevent illegal sales of tobacco, alternative nicotine and vapor products by educating retailers and increasing awareness of changes in Iowa's tobacco, alternative nicotine and vapor products laws. The program focuses on preventing underage sales and when not to make a sale. Participants will learn techniques for refusing the sale of tobacco, alternative nicotine and vapor products with minimal confrontation and how to legally confiscate an altered or fake ID. Establishments choosing to participate in the I-PLEDGE training are granted an affirmative defense, which may be used once in a four-year period. The training is offered online at no cost. For more information reference the handout provided in your packet or visit **<https://abd.iowa.gov/i-pledge>.**

## Smokefree Air Act

The Smokefree Air Act prohibits smoking in almost all public places and enclosed areas within places of employment, as well as some outdoor areas. The law applies to: restaurants, bars, outdoor entertainment events and amphitheaters.

For more information reference handouts provided in your packet or contact Iowa Department of Public Health.

**Phone:** 1-888-944-2247 **DEAF RELAY:** (Hearing or Speech Impaired) 711 or 1-800-735-2942.

**Website:** <http://www.iowasmokefreeair.gov/>

## Overnight Towns

### Orange City

125 N Central Ave

Orange City, IA 51041

712-707-4885

### Spencer

418 2nd Ave W

Spencer, IA 51301

712-580-7200

### Algona

112 W Call St

Algona, IA 50511

515-295-2411

### Clear Lake

15 N 6th St

Clear Lake, IA 50428

641-357-5267

### Charles City

105 Milwaukee Mall

Charles City, IA 50616

641-257-6300

### Cresco

130 N Park Pl

Cresco, IA 52136

563-547-3101

### Waukon

101 Allamakee St

Waukon, IA 52172

563-568-3491

### Lansing

201 John St

Lansing, IA 52151

563-538-4757

## Contact the Division

IOWA ALCOHOLIC BEVERAGES DIVISION 1918 SE HULSIZER RD

Ankeny, IA 50021

Tel: 515-281-7400

Website: <https://abd.iowa.gov/>



# SMOKEFREE AIR ACT

## Duties of Proprietors

### Overview

**Owners, operators, managers and persons having custody or control of a business are required to take certain actions in order to comply with the Smokefree Air Act.**

### Notifying Employees

- The Smokefree Air Act requires proprietors to inform all existing and prospective employees \* of the prohibitions described in the Smokefree Air Act. *\* Employee is any person who is employed by an employer in consideration for direct or indirect monetary wages or profit, or any person who provides services to an employer on a voluntary basis.*

### Posting of Signs

- Proprietors are required to post “No Smoking” signs at every entrance \* to an indoor or outdoor nonsmoking area.  
- Additionally, the Smokefree Air Act requires proprietors to post “No Smoking” signs in vehicles (owned, leased, or provided by the employer) which are visible from the vehicle’s exterior.  
*\*Entrance is any doorway to an enclosed area used by the public or employees for ingress and includes the commonly understood points of entry to an outdoor area such as a driveway, sidewalk, pathway, access road, gate or dedicated point of entry, but not including a street, road, highway, or sidewalk in the public right-of-way. (See Fact Sheet titled “Sign Requirements”)*

### Removal of Ashtrays

- The Smokefree Air Act requires proprietors to remove all ashtrays \* from public places where smoking is prohibited. *\*Ashtray is defined as any receptacle... that is used for extinguishing or disposing of any lighted... tobacco product... However, “ashtray” shall not include any receptacle located outdoors and on the perimeter of any public place, the perimeter of the grounds of any public building, the perimeter to school grounds, or the perimeter of any other outdoor space subject to the prohibitions of the Smokefree Air Act.*

### Notifying Customers in Violation

- A proprietor must inform any individual smoking in a place where smoking is prohibited that the individual is violating the Smokefree Air Act and must request that the individual stop smoking immediately.  
1. If the individual refuses to stop smoking, the proprietor may discontinue service to that individual.  
2. If the individual refuses to stop smoking, the proprietor may request that the individual leave the area where smoking is prohibited.  
3. If the individual refuses to leave the area proprietor may notify the state or local law enforcement agency with jurisdiction over the area where smoking is prohibited.

**NOTE:** The information provided in this document is not intended to be legal advice. Please consult state statutes or contact an attorney for additional information about the Smokefree Air Act (Iowa Code 142D).



# SMOKEFREE AIR ACT

## Sign Requirements

### Overview

**The Smokefree Air Act requires businesses, and state, county and city governments to post “no smoking” signs at every entrance to places where smoking is prohibited.**

To meet the sign requirements in the Smokefree Air Act, all “no smoking” signs should conform to the following:

- Signs must contain:
  1. The words “no smoking” or the international “no smoking” symbol
  2. The Smokefree Helpline: “1-888-944-2247”
  3. The official Web site: “[www.IowaSmokefreeAir.gov](http://www.IowaSmokefreeAir.gov)”
- “No smoking” signs must be at least 24 square inches in size (e.g., 3” x 8” or 4” x 6”, etc.)
- Vehicle “no smoking” signs must be at least 9 square inches in size (e.g., 3” x 3”, etc.)

Font type and size must be legible.

### Contents & Dimensions

### Posting of Signs

- A proprietor must inform any individual smoking in a place where smoking is prohibited that the individual is violating the Smokefree Air Act and must request that the individual stop smoking immediately.

1. If the individual refuses to stop smoking, the proprietor may discontinue service to that individual.
2. If the individual refuses to stop smoking, the proprietor may request that the individual leave the area where smoking is prohibited.
3. If the individual refuses to leave the area proprietor may notify the state or local law enforcement agency with jurisdiction over the area where smoking is prohibited.

**NOTE:** The information provided in this document is not intended to be legal advice. Please consult state statutes or contact an attorney for additional information about the Smokefree Air Act (Iowa Code 142D).



# SMOKEFREE AIR ACT

## Bars

### Overview

**The Smokefree Air Act prohibits smoking in all enclosed areas within places of employment, including bars. Bars may allow smoking on unenclosed, outdoor patios.**

### Bar Definitions

- The Smokefree Air Act defines "bar" as an establishment where a customer may purchase alcoholic beverages and in which the serving of food is incidental to the consumption of those beverages.
- Incidental food service is defined as food preparation that is limited to the service of ice, pre-packaged snack foods, popcorn, peanuts, and the reheating of commercially prepared foods that do not require assembly, such as frozen pizza, pre-packaged sandwiches, or other prepackaged, ready-to-serve products.
- Typically, an establishment meeting the criteria of bar will not contain food preparation equipment, including but not limited to the following: roaster oven, deep fat fryer, flat top grill, or crock pot. A bar may contain a microwave or toaster oven to heat commercially prepared foods.
- An establishment that prepares food beyond the limited food service described in the definitions above is considered a restaurant for the purposes of the Smokefree Air Act.

### Bar Restrictions

- Smoking is prohibited in all enclosed areas of a bar. These areas include serving areas, entrances, restrooms, hallways, and storage rooms.
- Smoking is not regulated in unenclosed outdoor patios or other outdoor areas of a bar.
- Nothing in the law prevents any owner or operator of a bar from declaring the entire property a nonsmoking place.

### Duties of Proprietors

Owners, operators, managers and persons having custody or control of a bar are required to take certain actions in order to comply with the Smokefree Air Act. These include:

- Informing employees about the law
- Not permitting smoking in any indoor area declared nonsmoking by the Smokefree Air Act
- Posting no-smoking at every entrance to areas where smoking is prohibited
- Removing all ashtrays from areas where smoking is prohibited (See the Fact Sheet titled, "*Duties of Proprietors*," for more information.)

NOTE: The information provided in this document is not intended to be legal advice. Please consult state statutes or contact an attorney for additional information about the Smokefree Air Act (Iowa Code 1420).





# SMOKEFREE AIR ACT

## Restaurants

### Overview

**The Smokefree Air Act prohibits smoking in all enclosed areas within places of employment, including restaurants. Smoking is also prohibited in the outdoor seating or serving areas of restaurants.**

### Restaurant Definitions

- The Smokefree Air Act defines "restaurant" as eating establishments...which offer food to the public, guests, or employees, including the kitchen and catering facilities in which food is prepared on the premises for serving elsewhere, and including a bar area within a restaurant
- The Smokefree Air Act defines "bar" as an establishment in which the serving of food is incidental to the consumption of alcoholic beverages. Incidental food service is limited to the service of pre-packaged snack foods, popcorn, the reheating of commercially prepared foods that do not require assembly. (See the Fact Sheet titled, "Bars.")
- A food service establishment, with or without a liquor license, that prepares food beyond the limited food preparation described in the definition of a bar is considered a restaurant for the purposes of the Smokefree Air Act.

### Restaurant Restrictions

- Smoking is prohibited in all enclosed areas of a restaurant. These areas include dining areas, entrance areas, restrooms, hallways, stairways, storage rooms, and kitchens.
- Smoking is prohibited in all outdoor seating or serving areas of restaurant. These areas include all outdoor places where customers are seated or served food or beverages.
- Smoking is not prohibited in a defined outdoor area of a restaurant, such as a patio or a portion of a patio, provided that there is no seating in such area and no restaurant employee serves food or beverages to a patron in such area.

### Duties of Proprietors

- Owners, operators, managers and persons having custody or control of a restaurant are required to take certain actions in order to comply with the Smokefree Air Act. These include:
  - Not permitting smoking in any indoor area declared nonsmoking by the Smokefree Air Act
  - Posting no-smoking at every entrance to areas where smoking is prohibited
  - Removing all ashtrays from areas where smoking is prohibited
- (See the Fact Sheet titled, "*Duties of Proprietors*," for more information.)

**NOTE:** The information provided in this document is not intended to be legal advice. Please consult state statutes or contact an attorney for additional information about the Smokefree Air Act (Iowa Code 142D).





# SMOKEFREE AIR ACT

## Outdoor Areas

### Overview

**The Smokefree Air Act regulates smoking in specified outdoor areas. Unless the law specifies that smoking is completely regulated in an area, the law does not specify a distance where smoking is regulated from the entrances to buildings.**

### Entertainment Venues

- Smoking is not allowed in the designated seating areas (permanent or temporary) of outdoor entertainment venues where members of the general public assemble to witness entertainment events, including but not limited to:

Sports arenas

Standing-room only

Stadiums

Chairs, seats, & bleachers

Amphitheatres

Festival-style seating

### Seating or Serving Areas of Restaurants

- Smoking is prohibited in all outdoor seating or serving areas of restaurant. These areas include all outdoor places where customers are seated and served food or beverages.
- Smoking is not prohibited in a defined outdoor area of a restaurant, such as a patio or a portion of a patio, provided that there is no seating in such area and no restaurant employee serves food or beverages to a patron in such area.

### Public Grounds

- The Smokefree Air Act prohibits smoking on the grounds of state and local government buildings.
- The person having custody or control of the grounds of the public building should define the outdoor areas used in connection with that building and properly post the outdoor entrances with "no smoking" signs as required by the Smokefree Air Act.
- Outdoor areas of a public building that are not used in connection with that building are not regulated by the Smokefree Air Act.

### School Grounds

- Smoking is prohibited on school grounds, including parking lots, athletic fields, playgrounds, tennis courts, and any other outdoor area under the control of a school.
- Smoking is prohibited inside any vehicle located on school grounds.

The Smokefree Air Act requires schools to remove all ashtrays from public places where smoking is prohibited.

### Public Transit Stations

- The Smokefree Air Act prohibits smoking on public transit stations, platforms, and shelters under the control of state and local governments

*For more information, please see fact sheets for the above listed areas.*

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# SMOKEFREE AIR ACT

## Outdoor Entertainment Events

### Overview

**The Smokefree Air Act prohibits smoking in permanent and temporary seating areas of outdoor entertainment events.**

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- Smoking is not allowed in the designated seating areas of outdoor entertainment venues, including but not limited to:

### Outdoor Venues

Sports Arenas

Stadiums

Amphitheatres

### Definition of Seating Areas

"Seating areas of outdoor sports arenas, stadiums, amphitheaters, or other entertainment venues" means areas designated by the owner, operator, manager, or other person having custody or control of the area to be used primarily to witness entertainment events and shall include, but not be limited to, all chairs, seats, and bleachers whether permanent or temporary; standing room only; general admission or festival style seating areas; and any other areas where individuals congregate to witness entertainment events."

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### Events on Public Grounds

- The Smokefree Air Act requires that the grounds of all public buildings be nonsmoking. Entertainment events held on the grounds of public buildings most also prohibit smoking in all enclosed and outdoor areas (See the Fact Sheet titled "*Grounds of Public Buildings*" for additional information).
- 

### Signage Requirements

- Signage which meets the requirements of the law must be posted at the entrances to designated seating areas of outdoor entertainment events (See the Fact Sheet titled "*Signage*" for additional information).
- 

**NOTE:** The information provided in this document is not intended to be legal advice. Please consult state statutes or contact an attorney for additional Iowa



# SMOKEFREE AIR ACT

## Public Parks

### Overview

**The Smokefree Air Act restricts smoking in certain areas of state, county and city parks and recreational facilities . The Smokefree Air Act does not apply to Federal parks.**

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### Indoor Areas

- Smoking is prohibited in all enclosed buildings or shelters on park property.
  - Smoking is not regulated in private residences located on park property, unless any portion of the private residence is open to the public.
- 

### Outdoor Areas

- Smoking is prohibited on the grounds\* of public buildings\*\* located within parks.  
\* "Grounds" are defined as "an outdoor area of a public building that is used in connection with the building...or any other outdoor area as designated by the person having custody or control of the public building." (See the Fact Sheet titled "*Grounds of Public Buildings.*")  
\*\* "Public building" is an enclosed area owned, leased, or operated by or under the control of the state government or its political subdivisions.
  - Outdoor areas where smoking may be allowed include: a parking lot, the course of play at a golf course, a hiking trail, locations of an individual campsite or campfire, or a lake, river, or other body of water, or
  - Nothing in the law prohibits any person having custody or control of the park from declaring the entire area or property a nonsmoking place.
- 

### Posting of Signs

- "No smoking" signs which meet the requirements of the Smokefree Air Act must be clearly posted at every entrance to an enclosed building or shelter and at "commonly understood points of entry and exit to and from an outdoor area." (See the Fact Sheet titled, "*Signage.*")
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**NOTE:** The information provided in this document is not intended to be legal advice. Please consult state statutes or contact an attorney for additional information about the Smokefree Air Act (Iowa Code 1420).

## LEGALLY SPEAKING

## TAKING A GAMBLE WITH YOUR LICENSE?

### Already Hold a Social Gambling License?

If you have a social gambling license, please check your license to ensure it has not expired. The

Department of Inspections and

Appeals (DIA) currently does not provide notice to licensees of their renewal date. Social gambling on a premise with an expired license subjects the licensee to the same penalties as not having one at all.

### Penalties

Gambling that occurs at a licensed on-premises establishment without a social gambling license is a violation of Iowa law. First offense violators may face fines up to \$1,000 and suspensions lasting up to 21 days.

### Don't Take a Gamble with Your Alcohol License!

DIA recommends that all on-premises licensees obtain a social gambling license. To apply for a social gambling license, complete a paper or online application, both of which are accessible on DIA's website. Along with the application, applicants must provide a letter on official letterhead from a financial institution or other entity, stating the establishment has an account in good standing. If conducting a sports betting pool, a copy of the grid and an explanation of how the pool will be conducted must also accompany the application. A social gambling license costs \$150 and is valid for two years from the date issued. Applications must be submitted at least 30 days before the beginning date requested. Visit <http://dia.iowa.gov/food-consumer-safety/social-and-charitable-gambling> for rules and regulations regarding social gambling. If you have further questions, please contact the Social and Charitable Gambling Unit at (515) 281-6848

It may only be February, but one sign that spring is just around the corner is the excitement that comes with the culmination of the college basketball season known as "March Madness." Many people throughout the country strategically make their hopeful winning picks, all the while knowing that their wager may be lost if they are not accurate in their selections. This seemingly acceptable practice of placing wagers on "March Madness" games is not without consequence however. With wagering activities such as this taking place in bars and restaurants where beer and liquor is sold, licensees should be aware of what is permissible under Iowa law.

Whether it's a restaurant conducting a sports betting pool or a bar allowing customers to play a game of Texas Hold'em, on-premises licensees are required to obtain a social gambling license. An establishment with a social gambling license may permit two types of gambling on its premises; gambling between individuals and sports betting pools.

### Gambling Between Individuals

In establishments with a social gambling license, gambling may occur between patrons who are together for purposes other than gambling. Therefore, a social relationship must exist beyond that apparent in the gambling situation. Gambling on small stakes card and parlor games such as cribbage, darts and pool is allowed with a social gambling license. No casino-style games, other than poker, are permissible but poker tournaments are never authorized with a social gambling license.

A licensee or its employees cannot sponsor, conduct or promote any game. A participant cannot win or lose more than a total of \$50 in a 24-hour period.

### Sports Betting Pools

An establishment with a social gambling license may conduct a sports betting pool if the game is publicly displayed and the rules of the game, including the cost per participant and the amount of the prizes, are clearly displayed on or near the pool. A participant cannot wager more than \$5 and maximum winnings to all participants in the pool cannot exceed \$500. All money wagered must be awarded to participants. The sports betting pool can only be used for one sporting event and must consist of a grid compliant with Iowa statute. Because of this requirement, the NCAA Basketball Tournament brackets are not legal at liquor establishments. For additional information on how to conduct a sports betting pool in grid format please refer to Iowa Code section 99B.6(7).

### Poker Tournaments, Poker Runs and Raffles

A social gambling license does not allow licensees to conduct poker tournaments, poker runs or raffles. These activities can only be conducted by a licensed charitable organization. A poker run is an organized event where participants must visit checkpoints, drawing a playing card at each one. The object is to have the best poker hand at the end of the run. Raffles are defined as a lottery where each patron buys a ticket for a chance at a prize, with the winner determined by a random method. The winner does not have to be present to win.





## LEGALLY SPEAKING

## INFUSED & PREMIXED DRINKS

With the passage and signing of House File 2465, the mixing, storing, and dispensing of mixed drinks, cocktails and alcohol infusions which are not for immediate consumption (herein referred to as premixed drinks) became legal July 1, 2012, for on-premises liquor licensees. However, the new language stipulates premixed drinks must be in compliance with the Iowa Code section 123.49(2)\*d\*(2) and rules adopted by the Alcoholic Beverages Division (ABD). The ABD filed and adopted rules which were effective July 1 2012. The rules define “immediate consumption” to mean the mixing and fulfilling of a mixed drink or cocktail order only after receiving the order. Licensees who intend to serve premixed drinks should become familiar with the following rules to ensure compliance with Iowa regulations.

### A Liquor Licensee Must:

- Utilize alcoholic beverages in the premixed drink which are authorized by the license and obtained through the three-tier system
- Comply with all applicable state and federal food safety regulations
- Comply with all federal alcohol regulations

### A Liquor Licensee Cannot:

- Add hallucinogenic substances, added caffeine or stimulants, or controlled substances to a premixed drink.

### A Premixed Drink Batch Must Be:

- Disposed of within 72 hours of mixing
- Mixed, stored, and consumed on the licensed premises
- In a labeled container that is compliant with state and federal food safety statutes.

### A Premixed Drink Batch Cannot Be:

- More than three gallons
- Removed from the licensed premises
- Mixed, stored, or dispensed from an original package of liquor or wine, or a container bearing an alcoholic beverage name brand
- Added to a relabeled empty container or another premixed drink batch if expired.

### Label Requirements

A label is required to be on each container that holds a premixed drink batch. The label must adhere to the container, in a noticeable place, until the entire contents are dispensed or destroyed. **The label must legibly identify:**

- The date and time of mixing alcoholic beverages with nonalcoholic ingredients in the container
  - The date and time the contents expire
  - The title of the recipe used for the contents
  - The size of batch
  - The person who prepared the contents
- Each label must be marked clearly with the words “CONTAINS ALCOHOL.”

### Record Keeping Requirements

Records must be maintained for three years on each prepared batch of premixed drinks. **The records must identify:**

- The date and time of mixing alcoholic beverages with nonalcoholic ingredients in the container
- Each alcoholic beverage, including the brand and amount used in the batch

- Each nonalcoholic ingredients used in the batch
- The recipe of title and directions
- The size of batch
- The person who prepared the

contents

- The date and time the contents were destroyed or entirely consumed
- If not consumed, the method of destruction
- The person who destroyed the contents

### Dispensing Machines

A dispensing machine that contains a premixed drink is required to follow the labeling, record keeping, and disposal requirements. Licensees who use a dispensing machine that contains a non-alcoholic premix, and add alcoholic beverages after receiving and dispensing a customer order for the beverage, are not required to label the container or maintain records.

### Violations

A failure to comply with the above rules will result in a fine, license suspension, and/or license revocation.

Licensees may access label, record keeping and recipe log templates at <https://abd.iowa.gov/alcohol/infused-and-premixed-drinks>.



**Stephen Larson, Administrator**

Find more information at

<https://abd.iowa.gov/>

Take the training at:

<https://ipocp.iowaabd.com/portal>

# I-PLEDGE ONLINE TOBACCO, ALTERNATIVE NICOTINE & VAPOR PRODUCTS TRAINING

## Why should you participate in I-PLEDGE?

The overall goal of I-PLEDGE is an increase of voluntary compliance with the state's tobacco, alternative nicotine and vapor products laws through education and enforcement. The core objective of the program is to prevent illegal sales of tobacco, alternative nicotine and vapor products by educating retailers and increasing awareness of changes in Iowa's tobacco, alternative nicotine and vapor products laws.

## What will you learn from I-PLEDGE?

While enforcement of Iowa's tobacco, alternative nicotine and vapor product laws is an important goal of I-PLEDGE, education of both law enforcement and the state's retailers is the primary focus of the program. The content focuses on key identifying elements of the latest format of Iowa driver's licenses, but also includes information on the previous version of licenses and identification and how to spot altered and fake IDs. The program focuses on preventing underage sales and when not to make a sale. Participants will learn techniques for refusing the sale of tobacco, alternative nicotine and vapor products with minimal confrontation and how to legally confiscate an altered or fake ID.

## Who should take the I-PLEDGE?

All individuals who sell tobacco, alternative nicotine and vapor products as well as holder of retail licenses should take the training. However, anyone who is interested may take the training free of charge.

### Make A Pledge

The program asks:

- Iowa's kids to pledge not to use tobacco, alternative nicotine and vapor products
- Iowa's retailers to pledge not to sell tobacco, alternative nicotine and vapor products to kids
- Iowa's law enforcement to pledge to enforce tobacco, alternative nicotine and vapor products laws in the state

### Civil & Criminal Penalties

Violations for illegal sales of tobacco, alternative nicotine and vapor products to minors include a \$100 criminal fine to the clerk as well as a \$300 civil fine to the retail establishment for the first violation. Subsequent violations result in higher fines, license suspension or even revocation.

### Certification

After successfully passing the final test, participants will receive a printable certificate of completion. The certification is valid for a period of two years. However, if an individual is cited for a sale-to-minor, the certification is revoked. The training may be taken again for recertification.

### Affirmative Defense

Establishments choosing to participate in I-PLEDGE training are granted an affirmative defense, which may be used once in a four-year period. A business may avoid civil prosecution if a tobacco,

alternative nicotine or vapor product sale-to-minor violation occurs in their establishment. In order for the business to take advantage of the affirmative defense, the employee guilty of the violation must have been I-PLEDGE certified prior to the

time the offense occurred. Only the business is eligible to avoid a civil penalty; the guilty employee will still be subject to a fine and his/her I-PLEDGE certification will be revoked.



**Stephen Larson, Administrator**

Find more information at

<https://abd.iowa.gov/>

Take the training at I-PACT.com



**IOWA**

# Program For Alcohol Compliance Training

## Why should you participate in I-PACT?

The overall goal of I-PACT is increased voluntary compliance with the state's alcohol laws through education and enforcement. The core objective of the program is to prevent illegal sales of alcohol by educating alcohol sellers and increasing awareness of changes in Iowa's liquor laws.

## What will you learn from I-PACT?

The content focuses on key identifying elements of the latest format of Iowa driver's licenses, but also includes information on the previous version of licenses and identification cards. I-PACT covers the Alcoholic Beverage Control Act (Iowa Code chapter 123), valid forms of identification, and how to spot altered and fake IDs. The program focuses on preventing underage sales and sales to intoxicated patrons. Participants will learn techniques for refusing the sale of alcohol with minimal confrontation and how to legally confiscate an altered or fake ID. The training also includes regulations and tips for offsite delivery of alcohol.

## Who should take the I-PACT?

All individuals who sell alcohol for on- or off-premises consumption, as well as holders of retail alcohol licenses should take the training. However, anyone who is interested may take the training.

## Make A Pact

The program asks that a Pact is made by:

- Iowa kids not to consume alcohol products
- Iowa retailers not to sell alcohol to minors
- Iowa licensees not to serve alcohol to patrons under 21
- Iowa's law enforcement to enforce alcohol laws.

## CERTIFICATION

After successfully passing the final test, participants will receive a printable certificate of completion. The certification is valid for a period of two years. However, if an individual is cited for a sale-to-minor, the training may be taken again for recertification.

## SIGN UP

I-PACT is available 24 hours a day, seven days a week, at [I-PACT.com](https://abd.iowa.gov/) or through the ABD's website at <https://abd.iowa.gov/>

## Civil & Criminal Penalties

Violations for illegal sales of alcohol to minors include a \$500 criminal fine to the clerk, as well as a \$500 civil fine to the retail establishment for the first violation. Subsequent violations can result in higher fines, license suspension or even revocation.

## AFFIRMATIVE DEFENSE

Establishments that choose to participate in the I-PACT training are granted an affirmative defense, which may be used once in a four-year period. A business may avoid civil prosecution if an alcohol sale-to-minor

violation occurs in their establishment. In order for the business to take advantage of the affirmative defense, the employee guilty of the violation must have been I-PACT certified prior to the time the offense occurred. However, the affirmative defense

cannot be used if the employee sold to a minor under the age of 18. Only the business is eligible to avoid a civil penalty; the guilty employee will still be subject to a fine and their I-PACT certification will be revoked.

# Things of Value

1. Can industry members give, sell, or rent coolers/cooler bags/dump bins to on- or off-premises licensees?  
No. Manufacturers and wholesalers are prohibited from directly or indirectly supplying, furnishing, giving or paying for any equipment used in the storage, handling, serving or dispensing of alcoholic beverages and food. Iowa Code § 123.45 and 185 IAC 16.40.
2. Can industry members give, sell, or rent logoed buckets or pitchers to on- or off-premises licensees?  
No. Manufacturers and wholesalers are prohibited from directly or indirectly supplying, furnishing, giving or paying for any equipment used in the storage, handling, serving or dispensing of alcoholic beverages and food. Iowa Code § 123.45 and 185 IAC 16.40.
3. Can industry members give, sell, or rent tents, tables and/or chairs to on- or off-premises licensees?  
No. Manufacturers and wholesalers are prohibited from directly or indirectly giving, selling, renting, or lending equipment, furnishings or fixtures to a retailer for use by the retailer or in the retail establishment. Iowa Code §123.45, 185 IAC 16.40 and 27 CFR 6.21.
4. Can industry members give, sell, or rent dispensing equipment, coil boxes or draft trucks with tapping equipment on the side to on- or off-premises licensees?  
No. Manufacturers and wholesalers are prohibited from directly or indirectly supplying, furnishing, giving or paying for any equipment used in the storage, handling, serving or dispensing of alcoholic beverages and food. Iowa Code § 123.45 and 185 IAC 16.40.
5. Can industry members park a refrigerated truck on an on- or off-premises licensed premises to store extra product in?  
No. Manufacturers and wholesalers are prohibited from directly or indirectly supplying, furnishing, giving or paying for any equipment used in the storage, handling, serving or dispensing of alcoholic beverages and food. Iowa Code § 123.45 and 185 IAC 16.40.
6. Can industry members give, sell, or rent a draft system or walk-in cooler to on- or off-premises licensees?  
No. Manufacturers and wholesalers are prohibited from directly or indirectly supplying, furnishing, giving or paying for any equipment used in the storage, handling, serving or dispensing of alcoholic beverages and food. Iowa Code § 123.45 and 185 IAC 16.40
7. Can industry members give, sell, or loan t-shirts to on- or off-premises licensees for their employees to wear?  
Yes. Manufacturers and wholesalers may give, sell or loan t-shirts to retailer's employees as point-of-sale items. The t-shirts must bear substantial advertising matter about the product or the manufacturer or wholesaler. Anything offered to one retailer must be uniformly offered to all retailers. Iowa Code §§ 123.45, 123.123, 123.135, 123.172, 123.180 and 123.186; 27 C.F.R § 6.84.
8. Can industry members sponsor a band or concert on licensed premises?  
Yes, as long as the sponsorships are not offered as an inducement to exclude a competitor's product. Anything offered to one retailer must be uniformly offered to all retailers. Iowa Code §§ 123.45, 123.123, 123.135, 123.172 and 123.180.
9. Can beer or wine industry members give disposable glassware to on- or off-premises licensees? No. Manufacturers and wholesalers must sell – not give – one-time usage cups made of paper, paper laminate, or plastic. Iowa law requires wholesalers to charge the retailer an amount equal to or greater than the cost of the one-time usage cups. Iowa Code § 123.45.

## Things of Value (continued)

10. Can a retailer demand industry members provide kegs, glasses, etc., at no cost prior to agreeing to carry the industry member's product?  
While retailers may try to negotiate benefits from wholesalers, the law prohibits the granting of some requests. For all items not expressly prohibited, anything an industry member offers to one retailer must be uniformly offered to all retailers. Iowa Code §§ 123.45, 123.123, 123.135, 123.172, 123.180 and 123.186.

## Advertising

11. Can industry members provide outside banners with brand names and/or logos to on- or off- premises licenses?  
No. Iowa law prohibits advertising on the outside of licensed premises if the advertising contains a brand name or other matter readily identified with the brand. Thus, a manufacturer or wholesaler may provide outside banners to retailers as long as the banners do not contain a brand name, logo or other advertising manner readily identified with a brand name. Anything offered to one retailer must be uniformly offered to all retailers. Iowa Code §§ 123.51, 123.123, 123.135, 123.172 and 123.180.
12. Can industry members give, sell, or rent umbrellas for outdoor service area tables to on- premises licensees?  
Yes. Manufacturers and wholesalers may give, sell or rent table umbrellas to retailers as point-of-sale items. The umbrellas must bear substantial advertising matter about the product or the manufacturer or wholesaler. Anything offered to one retailer must be uniformly offered to all retailers. Iowa Code §§ 123.45, 123.123, 123.135, 123.172, 123.180 and 123.186; 27 C.F.R. § 6.84.

## Return of Product

13. Can industry members allow the return of beer, wine, or liquor that annual (12 month) on- or off-premise licensees ordered too much of or is not selling?  
No. Manufacturers and wholesalers are prohibited by both federal and state law from accepting the return of overstocked and slow-moving beer, wine or liquor. Iowa Code § 123.186, 185 IAC 16.90, and 27 C.F.R. § 11.45.
14. Can industry members allow the return of beer, wine, or liquor that seasonal (6 and 8 month) on- or off-premises licensees ordered too much of or is not selling?  
Manufacturers and wholesalers may accept the return of product from a seasonal licensee, if the product is likely to spoil during the off season. Manufacturers and wholesalers are under no obligation to accept the return the product. Iowa Code § 123.186; 27 C.F.R. §§ 11.31 and 11.39.
15. Can industry members allow the return of beer, wine, or liquor that temporary (5-day and 14- day) on- or off-premises licensees ordered too much of?  
Yes. Manufacturers and wholesalers may accept the return of products that temporary licensees have on hand at the time the retailer terminates business. Manufacturers and wholesalers are under no obligation to accept the return the product. Iowa Code § 123.186, 185 IAC 16.90, and 27 C.F.R. § 11.35.

# Ordering Product

Each licensee/permittee must order product under the unique license/permit granted to each premises.

16. Can industry members sell an on- or off-premises licensee a 100 case buy and deliver half to each of the licensee's locations?  
No. Transferring products between retail premises is prohibited. Each premises is separately licensed and required to operate as a separate business. Each licensee/permittee must order product under the unique license/permit granted to each premises. Iowa Code §§ 123.123, 123.130, 123.172, 123.173, and 123.177.
17. Can licensees/permittees that are owned by the same person/entity share their alcoholic beverages inventory between their annual licensed location and temporary licensed location?  
No. Transferring products between retail premises is prohibited. Each premises is separately licensed and required to operate as a separate business. Each licensee/permittee must order product under the unique license/permit granted to each premises. Iowa Code §§ 123.123, 123.130, 123.172, 123.173, and 123.177.

## Pricing of Product

18. Can industry members donate beer, wine or liquor to on- or off-premises licensees?  
Yes, but since Iowa law prohibits manufacturers and wholesalers from discriminating between retailers, manufacturers or wholesalers must uniformly offer all rebates, free goods, or other discounts to all retailers. Iowa Code §§ 123.22, 123.123, 123.135, 123.172, and 123.180.
19. Can industry members give a quantity discount or rebate on beer, wine or liquor purchased by on- or off-premises licensees?  
Yes, but since Iowa law prohibits manufacturers and wholesalers from discriminating between retailers, manufacturers or wholesalers must uniformly offer all rebates, free goods, or other discounts to all retailers. Iowa Code §§ 123.22, 123.123, 123.135, 123.172, and 123.180.



## Freshness Dating and Allowable Returns of Malt Beverage Products under the FAA Act

*The Alcohol and Tobacco Tax and Trade Bureau (TTB) has been asked to clarify the circumstances under which retailers may return to wholesalers, and under which wholesalers may receive, malt beverage products that have been deemed unsuitable for sale because of freshness concerns without violating the consignment sales provision of the Federal Alcohol Administration Act (FAA Act) and TTB regulations.*

### TTB Rul. 2012-4

#### Background

Some brewers assign a coded “pull date” to their products to prevent stale or outdated products from remaining in the market. Brewers who assign pull date coding ask that distributors remove malt beverage products based on the pull date and replace them with fresh product. These brewers believe that relying on the wholesaler to monitor the pull date will ensure that only fresh products are in the retail market and that consumers do not purchase stale or spoiled malt beverages.

Brewers who include a “freshness date” on their products believe that such statements allow consumers to make purchasing decisions based on the freshness date. These brewers also assert that freshness dating is a quality control tool that offers some assurance that if the consumer purchases a malt beverage before that date, the product will not be deteriorated or spoiled.

Industry members who use freshness dating requested that TTB consider whether retailers may return to wholesalers malt beverage products past their freshness date as an allowable circumstance under the consignment sales provisions of the FAA Act.

#### Authority

The Secretary of the Treasury is authorized to prescribe regulations regarding unfair competition and unlawful trade practices involving the sale of wine, distilled spirits, and malt beverage products under [27 U.S.C. 205](#). In the case of malt beverages, trade practice provisions of the FAA Act apply only if the laws of the State into which the malt beverage products are sold or shipped impose similar requirements. TTB uses rulings and industry circulars to clarify the provisions of the FAA Act and implementing regulations, when appropriate.

TTB Ruling 2012-4

## Discussion

The consignment sales provision of the FAA Act, 27 U.S.C. § 205(d), makes it unlawful for an industry member (such as a producer, importer, or wholesaler of malt beverages, wines, or distilled spirits) to sell, offer for sale, or contract to sell to any trade buyer (a wholesaler or retailer), or for a trade buyer to purchase, offer to purchase, or contract to purchase any products (a) on consignment; or (b) under conditional sale; or (c) with privilege of return; or (d) on any basis other than a bona fide sale; or (e) if any part of the sale involves, directly or indirectly, the acquisition by such person of products from the trade buyer or the agreement to acquire other products from the trade buyer. However, section 205(d) does not prohibit transactions involving the bona fide return of products for “ordinary and usual commercial reasons arising after the merchandise has been sold”.

TTB regulations promulgating allowable (that is, ordinary and usual) reasons for returns under § 205(d) are found in 27 CFR part 11, [Subpart D – Rules for the Return of Distilled Spirits, Wine, and Malt Beverages](#). Sections 11.32 through 11.39 ([27 CFR 11.32 - 11.39](#)) of this subpart specify what are considered “ordinary and usual commercial reasons” for the return of products, and outline the conditions and limitations for such returns. The ordinary and usual commercial reasons listed under §§ 11.32-11.39 include:

- Defective product;
- Shipment error;
- A change in the law preventing sale of the product;
- Termination of the buyer’s business or franchise;
- Change in product from that in inventory;
- Product in inventory is discontinued; or
- Possible spoilage of product during the off-season of a seasonal retail dealer.

While industry members have the option to accept exchanges and returns for the ordinary and usual commercial reasons listed in §§ 11.32 through 11.39, they are under no obligation to do so.

As found under TTB regulations ([27 CFR 11.45 – 11.46](#)), returns or exchanges of products that are merely overstocked, slow moving, or are seasonal in nature, such as holiday decanters, and certain distinctive bottles do not constitute returns for ordinary and usual commercial reasons.

## TTB Determination

Under the following conditions, TTB will consider the return of malt beverages for cash or credit against outstanding indebtedness or exchange of such malt beverages for freshness reasons as a return by a retailer for ordinary or commercial reasons under [27 CFR 11.32](#):



TTB Ruling 2012-4

- The brewer has policies and procedures in place that specify the date the retailer must pull the product;
- Such brewer's freshness return/exchange policies and procedures are readily verifiable and consistently followed by the brewer;
- The container has identifying markings that correspond with this date; and
- The malt beverage product pulled by the retailer may not re-enter the retail marketplace.

TTB believes this policy addresses the realities of modern marketing practices while minimizing the possibility that the industry will use freshness dating returns as a subterfuge for disposing of slow-moving products.

However, if TTB determines that a wholesaler is requiring or forcing a retailer to overstock its products under the pretext that the retailer may exchange the product based upon freshness, TTB may investigate the wholesaler for violating the consignment sales and/or tied house provisions. (See [27 U.S.C. 205\(b\)\(7\) and \(d\)](#) as implemented under [27 CFR 6.71](#) and [§ 11.45](#).) Moreover, if industry members re-introduce into the marketplace malt beverages that were returned or exchanged for freshness purposes, TTB may investigate whether the purported freshness purpose was a mere subterfuge to violate these same consignment sales and/or tied house provisions.

*Held*, subject to the conditions described above, TTB considers the exchange of an identical quantity of the same brand or the return for cash or credit against outstanding indebtedness for freshness concerns as a return by a retailer for ordinary or commercial reason under 27 CFR 11.32.

Date Approved:

John J. Manfreda Administrator  
Alcohol and Tobacco Tax and Trade Bureau